

Councilmember Sophie Hahn  
City of Berkeley, District 5

## **SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 2**

**Meeting Date:** September 19, 2023

**Item Number:** 17

**Item Description:** **Amendments to Title 23 Relating to Accessory Dwelling Units (ADUs) and Repeal of Chapter 12.99 to Conform to State Law and Respond to Guidance from the California Department of Housing and Community Development**

**Submitted by:** **Mayor Arreguin and Councilmembers Wengraf and Hahn**

Recommending that ADU Policy Alternatives 1, 2 and 3, as proposed in Staff's Supplemental 1 filing, be adopted and submitting AC Transit bus schedules to the record.

With respect to Policy Alternative 1, addressing ADUs sited within front setbacks, slightly amended language is proposed for adoption, as provided by the City Attorney's Office. The amended language is for clarity of drafting and does not change the operation of the Policy Alternative. Policy Alternatives 2 and 3, which restore policies previously adopted by the City Council on conversion of non-conforming Accessory Buildings and Structures and Neighborhood Noticing, are recommended for adoption as presented in the Staff's Supplemental 1 Report.

AC Transit Schedules for lines 7, 65, and 67, which serve areas in the Hillside Overlay, are submitted to demonstrate limited weekday headways and non-existent hours of operation nights, weekends, and holidays, as referenced in Section (C)(2) of the Ordinance Findings.

Also included is documentation to support use of Public Resources Code definition of Transit.

### **Policy Alternative 1:**

ADUs are an important way to bring gentle density into residential neighborhoods. Laws passed at the state level enable the production of ADUs through conversions, additions, and new-build. One element of these laws allows ADUs to be placed within a front setback if an 800 square foot ADU cannot be accommodated elsewhere on the parcel.

This opens the entire front setback - not just a small portion that may be needed to achieve 800 square feet - for siting of the ADU, including the potential to site the ADU directly on the front lot line.

This is [what happened at the 2915 Harper Street location](#) in South Berkeley.

An ADU was placed directly at the front lot line because other areas of the parcel could not accommodate an 800 square foot ADU. The outcome at Harper Street has been a significant concern for the community and some Councilmembers.

Policy Alternative 1 (page 28 of Staff's Supplemental 1 Report) proposes an objective standard that fixes the Harper Street "problem" while still complying with State law. This Policy Alternative allows intrusions into the front setback in a graduated manner, with siting of an ADU at the front lot line available only as a last resort.

- **Step 1:** If an 800 square foot ADU cannot be accommodated on the parcel, an ADU may be sited in the existing front setback but must still maintain a reduced 10-foot setback.
- **Step 2:** If an 800 square foot ADU cannot be sited within the reduced 10-foot setback, a 5 foot, further-reduced setback is allowed.
- **Step 3:** If a 5-foot setback precludes an 800 square foot ADU, the ADU may be sited at the front lot line.

Staff's language was simplified by the City Attorney's office, and their more succinct version is proposed here for adoption, with identical effect:

#### **Section 23.306.030 (A)(4)**

Front Setback, New Construction. An ADU shall not occupy area within the front setback, unless the requirement would preclude an ADU of 800 square feet. [Should an ADU require area within the front setback, the ADU shall maintain a minimum 10-foot setback from the front lot line, unless such setback would preclude an ADU of 800 square feet. If a 10-foot setback would preclude an ADU of 800 square feet, the ADU shall maintain a 5-foot setback from the front lot line. If a 5-foot setback would preclude an ADU of 800 square feet, the ADU may be sited up to the front lot line.](#)

This easily implemented objective standard balances the need to allow ADUs to occupy area within a front setback while still preserving as much of a front setback as possible.

The graduated reduced front setback alternative has the same effect as all setbacks – the buildable area on the parcel will be a different shape from what would be possible with other or no setbacks. The purpose, as with all setbacks, is to mitigate impacts on the

public right of way and on adjacent parcels and to conform more closely with the normal expectation that in Berkeley's residential areas, a front setback will exist.

### **Policy Alternative 2:**

Policy Alternative 2 addresses the circumstance of an ADU converted from a non-conforming Accessory Building or Structure such as a shed or garage. It re-introduces a concept already included in Berkeley's ADU Ordinance, which staff has proposed to eliminate in the main staff report.

By limiting conversion of non-conforming Accessory Buildings and Structures to structures at least 3 years old, Council previously closed a loophole whereby a new Accessory Building or Structure that would not comply with ADU standards is constructed and immediately converted into a non-conforming ADU, thereby circumventing ADU requirements. Staff's main report eliminates this currently existing requirement and proposes reinstating it as a "Policy Alternative."

Nothing in State ADU Laws nor in the State Department of Housing and Community Development (HCD) ADU handbook precludes or addresses this loophole-closing measure, which does not preclude or constrain construction of a legally conforming ADU.

This supplemental recommends reinstating the existing measure to close this loophole, using language provided in the Staff Supplemental 1, Policy Alternative 2.

### **Policy Alternative 3:**

Additionally, Berkeley's existing ADU code includes a neighbor noticing requirement that includes adjacent, confronting, and abutting properties. Staff's recommendation removes these noticing requirements and proposes them as Policy Alternative 3. This Supplemental recommends adoption of Policy Alternative 3, as presented by staff in their Supplemental 1 Report, to maintain the currently existing requirement of notice to owners and tenants of adjacent, confronting, and abutting properties. Staff has already updated the City's noticing document to ensure neighbors understand that notice is a courtesy and does not imply any right to contest or appeal an ADU permit.

### **Documentation to Further Support Staff's Recommendation to use the Public Resources Code Definition of Transit:**

The definition of public transit used in Public Resources Code Section 21155 and 21064.3 is consistent with the state laws and regulations for ADU construction in California and has become the standard definition for recently passed housing legislation. It is also the definition being proposed by staff in the City of Berkeley's "Missing Middle" legislation. The following state laws that support development of ADUs use the Public Resources Code definition:

[SB 9](#), Atkins. Housing development: approvals. (2021-2022)

[SB 897](#), Wieckowski. Accessory dwelling units: junior accessory dwelling units. (2021-2022)

[AB 2221](#), Quirk-Silva. Accessory dwelling units. (2021-2022)

[AB 68](#), Quirk-Silva. Department of Housing and Community Development: California Statewide Housing Plan: annual reports. (2021-2022)

# 7 Monday through Friday except holidays To El Cerrito Del Norte BART

Emeryville Amtrak	Ashby Ave. & San Pablo Ave.	Ashby BART	Bancroft Way & Telegraph Ave.	Allston Way & Shattuck Ave.	Solano Ave. & The Alameda	Arlington Blvd. & Moeser Lane	El Cerrito Del Norte BART
6:00a	6:05a	6:12a	6:25a	6:29a	6:36a	6:46a	7:03a
6:30a	6:35a	6:42a	6:55a	6:59a	7:06a	7:16a	7:33a
7:00a	7:05a	7:12a	7:25a	7:29a	7:36a	7:46a	8:03a
7:30a	7:35a	7:42a	7:55a	7:59a	8:06a	8:16a	8:33a
8:00a	8:05a	8:12a	8:25a	8:29a	8:36a	8:46a	9:03a
8:30a	8:35a	8:42a	8:55a	8:59a	9:06a	9:16a	9:33a
9:00a	9:05a	9:12a	9:24a	9:29a	9:37a	9:47a	10:04a
9:30a	9:35a	9:42a	9:54a	9:59a	10:07a	10:17a	10:34a
10:00a	10:05a	10:12a	10:24a	10:29a	10:37a	10:47a	11:04a
10:30a	10:35a	10:42a	10:54a	10:59a	11:07a	11:17a	11:34a
11:00a	11:05a	11:12a	11:24a	11:29a	11:37a	11:47a	12:04p
11:30a	11:35a	11:42a	11:54a	11:59a	12:07p	12:17p	12:34p
12:00p	12:05p	12:11p	12:24p	12:29p	12:37p	12:47p	1:04p
12:30p	12:35p	12:41p	12:54p	12:59p	1:07p	1:17p	1:34p
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6:30p	6:35p	6:41p	6:52p	6:57p	7:05p	7:14p	7:30p
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# 7

# AC TRANSIT SCHEDULE

EFFECTIVE:  
**August 6, 2023**

## Emeryville

Emeryville Amtrak  
Hollis St.

## Berkeley

Ashby Ave.  
College Ave.  
UC Berkeley  
Downtown Berkeley BART  
Shattuck Avenue  
The Circle

## Kensington

Arlington Avenue

## El Cerrito

Arlington Blvd.  
Barrett Avenue  
El Cerrito del Norte BART

Every day

# 7 Monday through Friday except holidays To Emeryville Amtrak

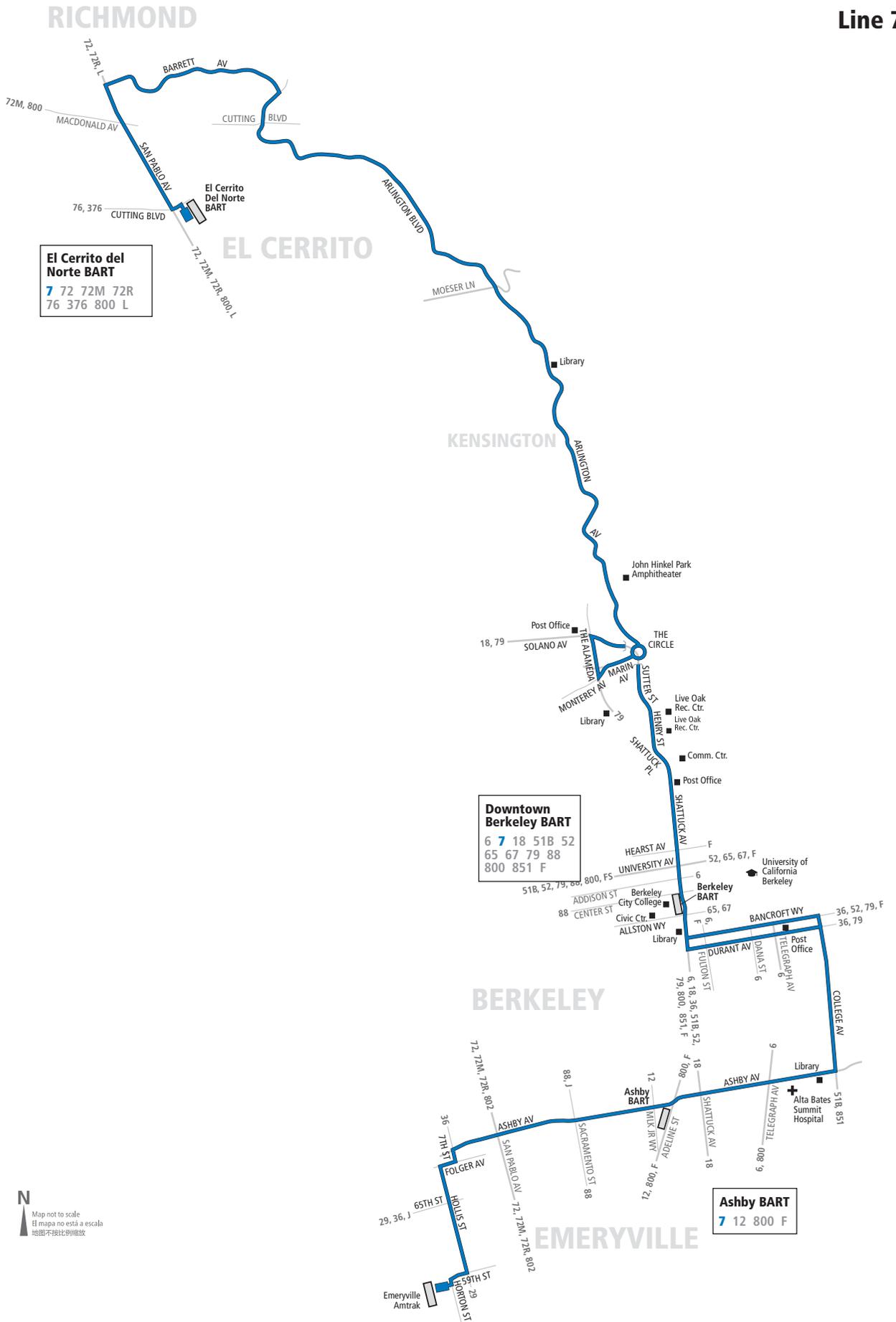
El Cerrito Del Norte BART	Arlington Blvd. & Moeser Lane	Solano Ave. & The Alameda	Allston Way & Shattuck Ave.	Durant Ave. & Telegraph Ave.	Ashby BART	Ashby Ave. & San Pablo Ave.	Emeryville Amtrak
6:00a	6:15a	6:26a	6:35a	6:39a	6:48a	6:54a	7:00a
6:30a	6:45a	6:56a	7:05a	7:09a	7:18a	7:24a	7:30a
7:00a	7:15a	7:26a	7:35a	7:39a	7:48a	7:54a	8:00a
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8:00a	8:15a	8:25a	8:34a	8:39a	8:49a	8:55a	9:01a
8:30a	8:45a	8:55a	9:04a	9:09a	9:19a	9:25a	9:31a
9:00a	9:14a	9:24a	9:33a	9:38a	9:48a	9:54a	10:00a
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# 7 Saturdays, Sundays and holidays To El Cerrito Del Norte BART

Emeryville Amtrak	Ashby Ave. & San Pablo Ave.	Ashby BART	Bancroft Way & Telegraph Ave.	Allston Way & Shattuck Ave.	Solano Ave. & The Alameda	Arlington Blvd. & Moeser Lane	El Cerrito Del Norte BART
6:00a	6:05a	6:11a	6:22a	6:26a	6:33a	6:40a	6:55a
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# 7 Saturdays, Sundays and holidays To Emeryville Amtrak

El Cerrito Del Norte BART	Arlington Blvd. & Moeser Lane	Solano Ave. & The Alameda	Allston Way & Shattuck Ave.	Durant Ave. & Telegraph Ave.	Ashby BART	Ashby Ave. & San Pablo Ave.	Emeryville Amtrak
6:00a	6:15a	6:24a	6:34a	6:38a	6:46a	6:52a	6:57a
6:30a	6:45a	6:54a	7:04a	7:08a	7:16a	7:22a	7:27a
7:00a	7:15a	7:24a	7:34a	7:38a	7:46a	7:52a	7:57a
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9:30p	9:45p	9:55p	10:05p	10:11p	10:19p	10:24p	10:29p
10:00p	10:15p	10:24p	10:34p	10:39p	10:47p	10:52p	10:57p



# 65 Monday through Friday except holidays To Senior Ave. loop

Allston Way & Shattuck Ave.	Euclid Ave. & Grizzly Peak Blvd.	Lawrence Hall of Science	Grizzly Peak Blvd. & Senior Ave.
7:15a	7:27a	7:35a	
7:55a	8:07a	—	8:15a
8:35a	8:47a	8:55a	
9:15a	9:27a	—	9:35a
9:55a	10:07a	10:15a	
10:35a	10:47a	—	10:55a
11:15a	11:27a	11:35a	
11:55a	12:07p	—	12:15p
12:35p	12:49p	12:58p	
1:15p	1:29p	—	1:37p
1:55p	2:09p	2:18p	
2:35p	2:50p	—	2:58p
3:15p	3:30p	3:38p	
3:55p	4:10p	—	4:18p
4:35p	4:50p	4:58p	
5:15p	5:30p	—	5:38p
5:55p	6:10p	6:18p	
6:35p	6:50p	—	6:58p
7:15p	7:29p	7:37p	

# 65 Monday through Friday except holidays To Downtown Berkeley

Lawrence Hall of Science	Grizzly Peak Blvd. & Senior Ave.	Euclid Ave. & Grizzly Peak Blvd.	Allston Way & Shattuck Ave.
7:35a	—	7:47a	8:04a
—	8:15a	8:27a	8:44a
8:55a	—	9:07a	9:24a
—	9:35a	9:47a	10:06a
10:15a	—	10:28a	10:47a
—	10:56a	11:08a	11:27a
11:36a	—	11:49a	12:08p
—	12:16p	12:28p	12:47p
12:58p	—	1:11p	1:30p
—	1:38p	1:50p	2:09p
2:18p	—	2:31p	2:50p
—	2:58p	3:10p	3:27p
3:38p	—	3:50p	4:07p
—	4:18p	4:30p	4:47p
4:58p	—	5:10p	5:27p
—	5:38p	5:50p	6:07p
6:18p	—	6:30p	6:47p
—	6:58p	7:10p	7:27p
7:37p	—	7:48p	8:05p

# 65

# AC TRANSIT SCHEDULE

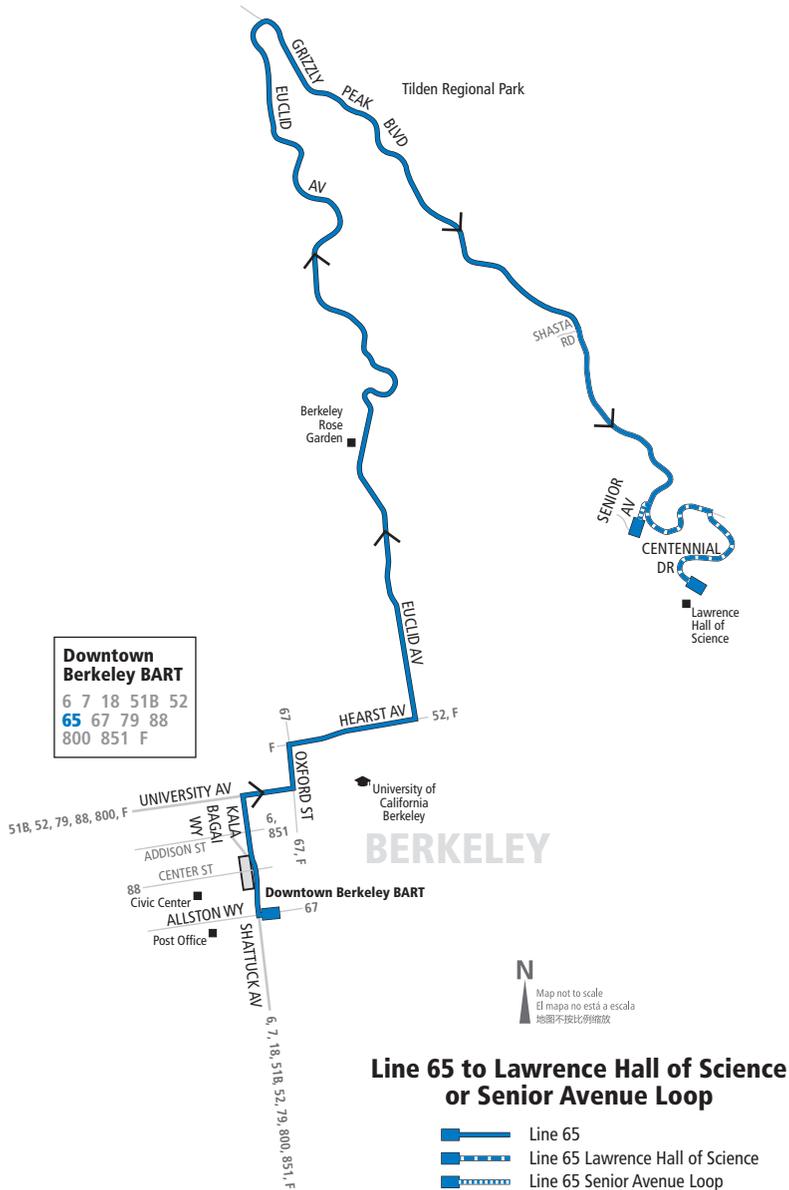
EFFECTIVE:  
**August 6, 2023**

## Berkeley

- Downtown Berkeley BART
- Hearst Avenue
- Euclid Avenue
- Grizzly Peak Blvd.
- Lawrence Hall of Science
- Senior Avenue
- Campus Drive

Monday through Friday except  
holidays

# Line 65



# 67 Monday through Friday except holidays To Downtown Berkeley

Spruce St. & Grizzly Peak Blvd.	Kenyon Ave. & Trinity Ave.	Vassar Ave. & Spruce St.	Allston Way & Shattuck Ave.
7:35a	7:37a	7:41a	7:56a
8:05a	8:07a	8:11a	8:26a
8:35a	8:37a	8:41a	8:56a
9:05a	9:07a	9:11a	9:26a
9:35a	9:37a	9:41a	9:56a
10:05a	10:07a	10:11a	10:26a
10:35a	10:37a	10:41a	10:56a
11:05a	11:07a	11:11a	11:26a
11:35a	11:37a	11:41a	11:56a
12:05p	12:07p	12:11p	12:26p
12:35p	12:37p	12:41p	12:56p
1:05p	1:07p	1:11p	1:26p
1:35p	1:37p	1:41p	1:56p
2:05p	2:07p	2:11p	2:26p
2:35p	2:37p	2:41p	2:56p
3:05p	3:07p	3:11p	3:26p
3:35p	3:37p	3:41p	3:56p
4:05p	4:07p	4:11p	4:26p
4:35p	4:37p	4:41p	4:56p
5:05p	5:07p	5:11p	5:26p
5:35p	5:37p	5:41p	5:56p
6:05p	6:07p	6:11p	6:26p
6:35p	6:37p	6:41p	6:56p
7:05p	7:07p	7:11p	7:26p

# 67 Monday through Friday except holidays To Spruce St. & Grizzly Peak Blvd.

Allston Way & Shattuck Ave.	Spruce St. & Grizzly Peak Blvd.
8:12a	8:22a
8:42a	8:53a
9:12a	9:23a
9:42a	9:53a
10:12a	10:23a
10:42a	10:53a
11:12a	11:23a
11:42a	11:53a
12:12p	12:23p
12:42p	12:53p
1:12p	1:24p
1:42p	1:54p
2:12p	2:24p
2:42p	2:55p
3:12p	3:25p
3:42p	3:55p
4:12p	4:25p
4:42p	4:56p
5:12p	5:26p
5:42p	5:56p
6:12p	6:26p
6:42p	6:56p

# 67

# AC TRANSIT SCHEDULE

EFFECTIVE:

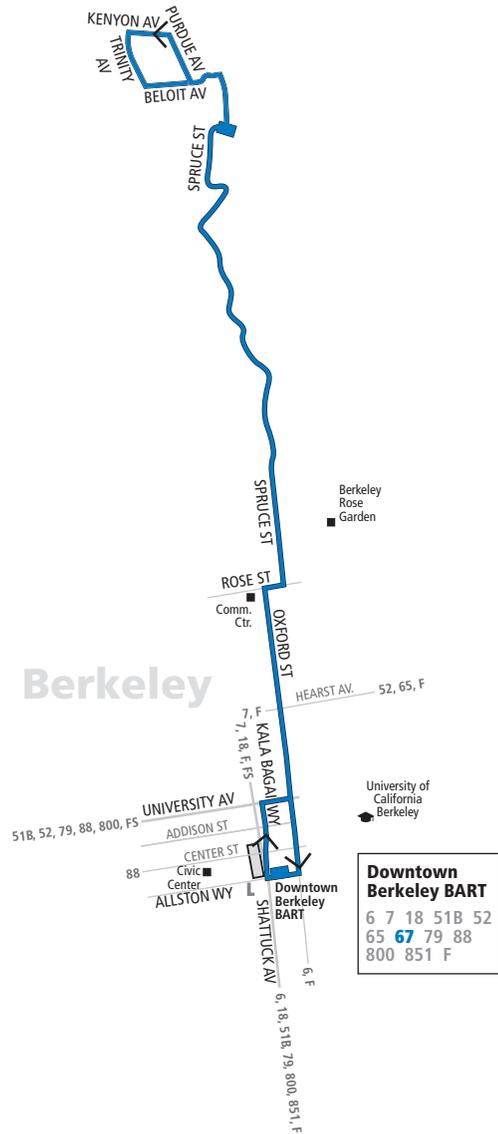
**December 5, 2021**

## Berkeley

Downtown Berkeley BART  
Oxford Street  
Spruce Street  
Beloit Avenue

Monday through Friday except  
holidays

# Line 67



**Downtown Berkeley BART**  
 6 7 18 51B 52  
 65 **67** 79 88  
 800 851 F

N  
 Map not to scale  
 El mapa no està a escala  
 地圖不按比例縮放